

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-DL-679
)	
East Texas Broadcasting, Inc.)	NAL/Acct. No.200332500002
Licensee of AM Broadcast Station KPLT and)	
Owner of Antenna Structure 1236893 in Paris,)	FRN 0005-0139-41
Texas)	
Mount Pleasant, Texas		

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: March 4, 2003

By the Enforcement Bureau, Dallas Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find East Texas Broadcasting, Inc. (“East Texas Broadcasting”), licensee of AM Broadcast station KPLT, Paris, Texas, and owner of antenna structure 1236893 in Paris, Texas, apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.4(a) of the Commission's Rules (“Rules”) and willful violation of Section 73.49 of the Rules.¹ Specifically, we find East Texas Broadcasting, Inc. apparently liable for failing to register its antenna structure for radio station KPLT and for failing to enclose its antenna tower with an effective locked fence.

II. BACKGROUND

2. On November 4, 2002, an agent from the Commission’s Dallas Field Office (“Dallas Office”) inspected East Texas Broadcasting’s antenna structure located at or near geographical coordinates 33° 38’ 09” North Latitude by 095° 33’14” West Longitude, in Paris, Texas. This structure was utilized at AM radio station KPLT, and had radio frequency (“RF”) potential at the base of this antenna tower. The agent found the gate to the tower base fence unlocked. A sign at the base of the structure displayed Antenna Structure Registration (“ASR”) number 1053395. The FCC’s Antenna Structure Registration database showed that ASR number 1053395 had been purged from the database with the notation “Aged Return Deletion.”

3. On November 14, 2002, East Texas Broadcasting provided to the Dallas Office correspondence from the FCC to KPLT, Inc., the former owner of station KPLT and of the antenna structure, returning KPLT, Inc.’s application for antenna structure registration due to errors in the structure’s approved height. The process date for the return of the application was listed as July 9, 1998. East Texas Broadcasting acquired the antenna structure on or about August, 2001, and subsequently registered this antenna structure in their name on December 2, 2002 (ASRN 1236893).

¹ 47 C.F.R. §§ 17.4(a) and 73.49.

III. DISCUSSION

4. Section 17.4(a) of the Rules requires the owner of an antenna structure that requires notice to the Federal Aviation Administration (“FAA”) to register the antenna structure with the Commission. East Texas Broadcasting’s antenna structure required notification to the FAA, and thus required FCC registration, because the structure height exceeded 200 feet.² In addition, Section 17.57 of the Rules requires the antenna structure owner to immediately notify the Commission upon any change in ownership information.³ The previous owner of this antenna structure had applied for registration with the Commission, but the application was rejected and returned due to errors in the approved height. Even if, at the time East Texas Broadcasting acquired the structure in August, 2001, it erroneously believed that the structure had been properly registered by the previous owner, East Texas Broadcasting would have discovered that the structure was not registered when it sought to make the required notification of a change in ownership. However, from August, 2001, until December 2, 2002, East Texas Broadcasting owned an antenna structure that required notice to the FAA, and thus required Commission registration, yet East Texas Broadcasting failed to register the structure.

5. Section 73.49 requires antenna towers that have RF potential at the base to be enclosed within effective locked fences or other enclosures. The KPLT antenna tower is series fed and has RF potential at the base. On November 4, 2002, the gated fence surrounding the tower was found unlocked.

6. Based on the evidence before us, we find East Texas Broadcasting willfully⁴ and repeatedly⁵ violated Section 17.4(a) of the Rules and willfully violated Section 73.49 of the Rules by failing to register its antenna supporting structure and failing to provide an effective locked fence or other enclosure around the base of the antenna.

7. Pursuant to Section 1.80(b)(4) of the Rules,⁶ the base forfeiture amounts for the violations cited in this Notice are: \$3,000 for failure to file required forms or information (i.e. failure to file an application for antenna structure registration) and \$7,000 for AM tower fencing. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷ Considering the entire record and

² See 47 C.F.R. § 17.7(a).

³ 47 C.F.R. § 17.57.

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁵ The term “repeated,” when used with reference to the commission or omission of any act, “means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

⁶ 47 C.F.R. § 1.80(b)(4).

⁷ 47 U.S.C. § 503(b)(2)(D).

applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁸ and Sections 0.111, 0.311 and 1.80 of the Rules,⁹ East Texas Broadcasting, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 17.4(a) of the Rules and willful violation of Section 73.49 of the Rules by failing to register its antenna supporting structure and failing to provide an effective locked fence around the base of the antenna.

9. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, East Texas Broadcasting, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁰

11. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Technical & Public Safety Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹⁰ See 47 C.F.R. § 1.1914.

provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

14. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to East Texas Broadcasting, Inc., PO Box 990, Mount Pleasant, Texas 75456.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
Dallas Office, Enforcement Bureau

Attachment